

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
August 22, 2006

v

ERIK DEWAYNE LITTLE, a/k/a ERIC  
DEWAYNE LITTLE,

No. 260100  
Berrien Circuit Court  
LC No. 2003-406131-FC

Defendant-Appellant.

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Before: Zahra, P.J., and Neff and Owens, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to commit murder, MCL 750.83, and first-degree home invasion, MCL 750.110a(2). The trial court sentenced defendant to 9 to 20 years' imprisonment for his assault with intent to commit murder conviction and to a concurrent term of 5 to 20 years' imprisonment for his first-degree home invasion conviction. Defendant appeals as of right. We affirm.

On October 25, 2003, defendant Erik Little broke into the home of his estranged wife, Shelley Wilson. Once inside, he stabbed Scott Desenberg, who was involved in a relationship with Wilson.

At trial, defendant sought to introduce evidence of Wilson's alleged drug use. Defendant argued that the evidence was relevant to prove his intent and motive on the night he broke into Wilson's house. Specifically, defendant asserted that the evidence showed that he broke into her house because he was concerned about her drug use and "was going to help her." Moreover, defendant asserted that the evidence proved that, when he broke into the house, he did not intend to harm or kill anyone. He intended to check on and assist Wilson. Further, when he stabbed Desenberg, he was acting in self-defense. The trial court ruled that evidence of Wilson's alleged drug use was inadmissible. It reasoned that defendant's concern about Wilson's drug use was not a legal defense to the crimes charged.

Defendant contends on appeal that the trial court's decision to exclude evidence of Wilson's alleged drug use deprived him of his constitutional right to present a defense. Generally, we review evidentiary decisions for an abuse of discretion. *People v Layher*, 464 Mich 756, 761; 631 NW2d 281 (2001). However, we review de novo questions of law related to

the admission or exclusion of evidence. *Id.* We also review de novo “the constitutional question whether a defendant was denied her constitutional right to present a defense.” *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002).

A defendant has a constitutional right to present a defense and call witnesses in his defense. *Id.* However, the right to present a defense is not absolute. *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984). The accused must still comply with “established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.” *Id.*, quoting *Chambers v Mississippi*, 410 US 284, 302; 93 S Ct 1038; 35 L Ed 2d 297 (1973).

Defendant was charged with first-degree home invasion as a general intent crime. MCL 750.110a(2). However, defendant’s assertions, that he did not have the intent to kill or injure anyone and that he acted in self-defense, may be a defense to the crime of first-degree home invasion, as it was charged in this case. Assault with intent to commit murder, MCL 750.83, one of the underlying felonies supporting the first-degree home invasion charge, is a specific intent crime. *People v Brown*, 267 Mich App 141, 147-148; 703 NW2d 230 (2005). The elements of assault with intent to commit murder are: “ ‘(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder.’ ” *Id.* (citations omitted). Assault with a deadly weapon, or felonious assault, is also a specific intent crime. MCL 750.82; *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

If the jury in this case concluded that defendant did not possess the requisite intent to commit assault with the intent to commit murder, his assault conviction could not be sustained, and there would be no underlying felony to support defendant’s conviction for first-degree home invasion. Evidence of defendant’s intent was therefore significant to the determination of defendant’s guilt.

The trial court’s evidentiary ruling, precluding certain evidence of Wilson’s alleged drug use, did not deprive defendant of his defense. At trial, defendant argued that he did not possess the requisite intent to commit assault with intent to commit murder, and he asserted that he acted in self-defense. He testified that, when he went to Wilson’s house on October 25, 2003, he did not intend to stab, harm, or kill anyone.

When he entered the house, he expected to see Wilson’s sister and her boyfriend inside, and he was surprised when he saw Desenberg. He further testified that he had a reason for going to Wilson’s house that night and that it had nothing to do with jealousy or stalking Wilson. When he arrived at her house, he knocked on the door several times. When she failed to answer the door, he became concerned because “she’d been found on the floor a few times.” According to defendant, when Wilson finally came to the door, she was not acting normally and she looked “out of it.” Thus, he punched two panes of glass out of the door and entered her house. He was “concerned” and “was going to help her.”

Defendant stated numerous times during his testimony that he was scared of Desenberg. He was scared for his life because, when he confronted Desenberg in the living room of Wilson’s house, Desenberg grabbed him near the base of his neck in a threatening manner. Defendant was also scared when he stabbed Desenberg, and he was scared when Desenberg struggled with him

and attempted to take his knife from him. Desenberg admitted at trial that he made the first physical contact with defendant and that, before he grabbed defendant, defendant had not touched him or swung at him. He also testified that, when defendant first saw him and asked “who are you,” he sounded surprised, not angry.

The trial court’s ruling was not a blanket exclusion of all evidence tending to show that defendant acted in self-defense because the testimony squarely put that issue before the jury. Moreover, the trial court instructed the jury on self-defense. Thus, defendant was not deprived of his right to present a defense. Cf. *People v Martin*, 100 Mich App 447; 298 NW2d 900 (1980).

Defendant argues, however, that, if the trial court allowed him to introduce evidence of Wilson’s drug use, his defense would have been more credible. We disagree.

Contrary to defendant’s assertion, whether he intended to harm or kill Desenberg *when he broke into the house* is not significant. Rather, the threshold question is whether defendant possessed the requisite intent “*at the time he committed the assault.*” *People v Hunter*, 141 Mich App 225, 234; 367 NW2d 70 (1985) (emphasis added). Thus, the evidence offered by defendant to prove that he went to Wilson’s house because he was concerned about her drug use and that, when he entered the house, he did not intend to harm or kill anyone, was irrelevant. MRE 401; MRE 402. When defendant committed the assault, he had already broken into the house and saw that Wilson was not injured and was not lying on the floor in a drug-induced state.<sup>1</sup> Further, we fail to see how defendant’s alleged concern about Wilson’s alleged drug use at the time he assaulted Desenberg, constituted a legal defense to the crime of assault. Therefore, the trial court did not err in excluding the evidence.

Moreover, the evidence was not relevant to defendant’s claim of self-defense. “Relevant evidence” means “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” MRE 401. Evidence of Wilson’s alleged drug use was not probative of whether (1) defendant honestly and reasonably believed that he was in danger of being killed or seriously injured; (2) defendant was afraid of death or serious physical injury; (3) at the time he acted, defendant honestly and reasonably believed that his actions were immediately necessary; or (4) defendant could have safely retreated but did not do so. See *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002). Evidence of Wilson’s alleged drug use and defendant’s intent at the time he broke into the house was also not probative of defendant’s intent at the time he committed the assault against Desenberg. Therefore, contrary to defendant’s assertion, the evidence does not make it more probable that defendant acted in self-defense. It was properly excluded as irrelevant. MRE 402.

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<sup>1</sup> We also note that, when defendant entered the house, he proceeded directly to the living room without stopping to check on Wilson’s safety or well being.

Because the trial court did not err in excluding the evidence, MRE 402, and because there was evidence on the record to support defendant's claims and theory, defendant was not deprived of his constitutional right to present a defense.

Affirmed.

/s/ Brian K. Zahra

/s/ Janet T. Neff

/s/ Donald S. Owens